

107TH CONGRESS  
2D SESSION

# S. 2641

To amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products.

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IN THE SENATE OF THE UNITED STATES

JUNE 18, 2002

Mrs. MURRAY (for herself, Mr. BAUCUS, Ms. CANTWELL, Mr. DAYTON, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Ban Asbestos in Amer-  
5       ica Act of 2002”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) the Administrator of the Environmental  
9       Protection Agency has classified asbestos as a cat-

1       egory A human carcinogen, the highest cancer haz-  
2       ard classification for a substance;

3           (2) there is no known safe level of exposure to  
4       asbestos;

5           (3)(A) in hearings before Congress in the early  
6       1970s, the example of asbestos was used to justify  
7       the need for comprehensive legislation on toxic sub-  
8       stances; and

9           (B) in 1976, Congress passed the Toxic Sub-  
10      stances Control Act (15 U.S.C. 2601 et seq.);

11          (4) in 1989, the Administrator promulgated  
12      final regulations under title II of the Toxic Sub-  
13      stances Control Act (15 U.S.C. 2641 et seq.) to  
14      phase out asbestos in consumer products by 1997;

15          (5) in 1991, the United States Court of Appeals  
16      for the 5th Circuit overturned the regulations, and  
17      the Administrator did not appeal the decision to the  
18      Supreme Court;

19          (6) as a result, while new uses of asbestos were  
20      banned, asbestos is still being used in some con-  
21      sumer and industrial products in the United States;

22          (7) available evidence suggests that—

23            (A) imports of some types of asbestos-con-  
24      taining products may be increasing; and

1 (B) some of those products are imported  
2 from foreign countries in which asbestos is  
3 poorly regulated;

4 (8) many people in the United States incor-  
5 rectly believe that—

6 (A) asbestos has been banned in the  
7 United States; and

8 (B) there is no risk of exposure to asbestos  
9 through the use of new commercial products;

10 (9) asbestos has been banned in Argentina,  
11 Austria, Belgium, Chile, Croatia, Denmark, Finland,  
12 France, Germany, Iceland, Ireland, Italy, Latvia, the  
13 Netherlands, Norway, Poland, Saudi Arabia, Swe-  
14 den, Switzerland, and the United Kingdom;

15 (10) asbestos will be banned throughout the  
16 European Union in 2005;

17 (11) the World Trade Organization recently  
18 upheld the right of France to ban asbestos, with the  
19 United States Trade Representative filing a brief in  
20 support of the right of France to ban asbestos;

21 (12) the 1999 brief by the United States Trade  
22 Representative stated, “In the view of the United  
23 States, chrysotile asbestos is a toxic material that  
24 presents a serious risk to human health.”;

1           (13) people in the United States have been ex-  
2       posed to harmful levels of asbestos as a contaminant  
3       of other minerals;

4           (14) in the town of Libby, Montana, workers  
5       and residents have been exposed to dangerous levels  
6       of asbestos for generations because of mining oper-  
7       ations at the W.R. Grace vermiculite mine located in  
8       that town;

9           (15) the Agency for Toxic Substances and Dis-  
10      ease Registry found that over a 20-year period,  
11      “mortality in Libby resulting from asbestosis was  
12      approximately 40 to 60 times higher than expected.  
13      Mesothelioma mortality was also elevated.”;

14          (16)(A) in response to this crisis, in January  
15      2002, the Governor of Montana requested that the  
16      Administrator of the Environmental Protection  
17      Agency designate Libby as a Superfund site; and

18          (B) the Administrator is in the process of plac-  
19      ing Libby on the National Priorities List;

20          (17)(A) vermiculite from Libby was shipped for  
21      processing to 42 States; and

22          (B) Federal agencies are investigating potential  
23      harmful exposures to asbestos-contaminated  
24      vermiculite at sites throughout the United States;  
25      and

1           (18) although it is impracticable to ban asbes-  
 2           tos entirely because asbestos is a naturally occurring  
 3           mineral in the environment and occurs in several de-  
 4           posits throughout the United States, Congress needs  
 5           to do more to protect the public from exposure to  
 6           asbestos.

7 **SEC. 3. ASBESTOS-CONTAINING PRODUCTS.**

8           (a) IN GENERAL.—Title II of the Toxic Substances  
 9           Control Act (15 U.S.C. 2641 et seq.) is amended—

10           (1) by inserting before section 201 (15 U.S.C.  
 11           2641) the following:

12 **“Subtitle A—General Provisions”;**

13           and

14           (2) by adding at the end the following:

15 **“Subtitle B—Asbestos-Containing**  
 16 **Products**

17 **“SEC. 221. DEFINITIONS.**

18           “In this subtitle:

19           “(1) ASBESTOS-CONTAINING PRODUCT.—The  
 20           term ‘asbestos-containing product’ means any prod-  
 21           uct (including any part) to which asbestos is delib-  
 22           erately or knowingly added or in which asbestos is  
 23           deliberately or knowingly used in any concentration.

24           “(2) CONTAMINANT-ASBESTOS PRODUCT.—The  
 25           term ‘contaminant-asbestos product’ means any

product that contains asbestos as a contaminant of any mineral or other substance, in any concentration.

“(3) COVERED PERSON.—The term ‘covered person’ means—

“(A) any individual;

“(B) any corporation, company, association, firm, partnership, joint venture, sole proprietorship, or other for-profit or nonprofit business entity (including any manufacturer, importer, distributor, or processor);

“(C) any Federal, State, or local department, agency, or instrumentality; and

“(D) any interstate body.

“(4) DISTRIBUTE IN COMMERCE.—

“(A) IN GENERAL.—The term ‘distribute in commerce’ has the meaning given the term in section 3.

“(B) EXCLUSIONS.—The term ‘distribute in commerce’ does not include—

“(i) an action taken with respect to an asbestos-containing product in connection with the end use of the asbestos-containing product by a covered person that is an end user; or

1 “(ii) distribution of an asbestos-con-  
 2 taining product by a covered person solely  
 3 for the purpose of disposal of the asbestos-  
 4 containing product.

5 “(5) DURABLE FIBER.—

6 “(A) IN GENERAL.—The term ‘durable  
 7 fiber’ means a silicate fiber that—

8 “(i) occurs naturally in the environ-  
 9 ment; and

10 “(ii) is similar to asbestos in—

11 “(I) resistance to dissolution;

12 “(II) leaching; and

13 “(III) other physical or chemical  
 14 processes expected from contact with  
 15 lung cells and fluids.

16 “(B) INCLUSIONS.—The term ‘durable  
 17 fiber’ includes—

18 “(i) richterite;

19 “(ii) winchite;

20 “(iii) erionite; and

21 “(iv) nonasbestiform varieties of  
 22 chrysotile, crocidolite, amosite,  
 23 anthophyllite, tremolite, and actinolite.

24 “(6) FIBER.—The term ‘fiber’ means an acic-  
 25 ular single crystal or similarly elongated

1 polycrystalline aggregate particle with a length to  
 2 width ratio of 3 to 1 or greater.

3 **“SEC. 222. PANEL ON ASBESTOS AND OTHER DURABLE FI-**  
 4 **BERS.**

5 “(a) PANEL.—

6 “(1) IN GENERAL.—The Administrator shall  
 7 continue the panel (established by the Administrator  
 8 and in existence on the date of enactment of this  
 9 subtitle) to study asbestos and other durable fibers.

10 “(2) PARTICIPATION.—The Secretary of Labor,  
 11 the Secretary of Health and Human Services, and  
 12 the Chairman of the Consumer Product Safety Com-  
 13 mission shall participate in the activities of the  
 14 panel.

15 “(b) ISSUES.—The panel shall study and, not later  
 16 than 2 years after the date of enactment of this section,  
 17 provide the Administrator recommendations for, public  
 18 education programs relating to—

19 “(1) the need to establish, for use by all Fed-  
 20 eral agencies—

21 “(A) a uniform asbestos exposure stand-  
 22 ard; and

23 “(B) a protocol for measuring and detect-  
 24 ing asbestos;



1           “(2) the current state of the science relating to  
2           the human health effects of exposure to asbestos and  
3           other durable fibers;

4           “(3) implementation of subtitle A;

5           “(4) grant programs under subtitle A;

6           “(5) revisions to the national emissions stand-  
7           ards for hazardous air pollutants promulgated under  
8           the Clean Air Act (42 U.S.C. 7401 et seq.);

9           “(6) legislative and regulatory options for im-  
10          proving consumer and worker protections against  
11          harmful health effects of exposure to asbestos and  
12          durable fibers;

13          “(7) whether the definition of asbestos-con-  
14          taining material, meaning any material that contains  
15          more than 1 percent asbestos by weight, should be  
16          modified throughout the Code of Federal Regula-  
17          tions;

18          “(8) the feasibility of establishing a durable fi-  
19          bers testing program;

20          “(9) options to improve protections against ex-  
21          posure to asbestos from asbestos-containing products  
22          in buildings;

23          “(10) current research on and technologies for  
24          disposal of asbestos-containing products and con-  
25          taminant-asbestos products; and

1           “(11) at the option of the panel, the effects on  
 2           human health that may result from exposure to ce-  
 3           ramic, carbon, and other manmade fibers.

4   **“SEC. 223. STUDY OF ASBESTOS-CONTAINING PRODUCTS**  
 5                   **AND CONTAMINANT-ASBESTOS PRODUCTS.**

6           “(a) IN GENERAL.—In consultation with the Sec-  
 7           retary of Labor, the Chairman of the International Trade  
 8           Commission, the Chairman of the Consumer Product  
 9           Safety Commission, and the Assistant Secretary for Occu-  
 10          pational Safety and Health, the Administrator shall con-  
 11          duct a study on the status of the manufacture, processing,  
 12          distribution in commerce, ownership, importation, and dis-  
 13          posal of asbestos-containing products and contaminant-as-  
 14          bestos products in the United States.

15          “(b) ISSUES.—In conducting the study, the Adminis-  
 16          trator shall examine—

17               “(1) how consumers, workers, and businesses  
 18               use asbestos-containing products and contaminant-  
 19               asbestos products that are entering commerce as of  
 20               the date of enactment of this subtitle; and

21               “(2) whether consumers and workers are being  
 22               exposed to unhealthful levels of asbestos through ex-  
 23               posure to products described in paragraph (1).

24          “(c) REPORT.—Not later than January 1, 2005, the  
 25          Administrator shall submit to the Committee on Energy

1 and Commerce of the House of Representatives and the  
 2 Committee on Environment and Public Works of the Sen-  
 3 ate a report on the results of the study.

4 **“SEC. 224. PROHIBITION ON ASBESTOS-CONTAINING PROD-**  
 5 **UCTS.**

6 “(a) IN GENERAL.—Subject to subsection (b), the  
 7 Administrator shall promulgate—

8 “(1) not later than January 1, 2004, proposed  
 9 regulations that prohibit covered persons from man-  
 10 ufacturing, processing, or distributing in commerce  
 11 asbestos-containing products; and

12 “(2) not later than January 1, 2005, final regu-  
 13 lations that prohibit covered persons from manufac-  
 14 turing, processing, or distributing in commerce as-  
 15 bestos-containing products.

16 “(b) EXEMPTIONS.—

17 “(1) IN GENERAL.—Any person may petition  
 18 the Administrator for, and the Administrator may  
 19 grant an exemption from the requirements of sub-  
 20 section (a) if the Administrator determines that—

21 “(A) the exemption would not result in an  
 22 unreasonable risk of injury to public health or  
 23 the environment; and

1 “(B) the person has made good faith ef-  
 2 forts to develop a substance, or identify a min-  
 3 eral, that—

4 “(i) does not present an unreasonable  
 5 risk of injury to public health or the envi-  
 6 ronment; and

7 “(ii) may be substituted for an asbes-  
 8 tos-containing product.

9 “(2) TERMS AND CONDITIONS.—An exemption  
 10 granted under this subsection shall be in effect for  
 11 such period (not to exceed 1 year) and subject to  
 12 such terms and conditions as the Administrator may  
 13 prescribe.

14 “(c) INVENTORY.—

15 “(1) IN GENERAL.—Subject to paragraph (3),  
 16 each covered person (other than an individual) that  
 17 possesses an asbestos-containing product that is sub-  
 18 ject to the prohibition established under this section  
 19 shall establish an inventory of the asbestos-con-  
 20 taining product possessed by the covered person as  
 21 of January 1, 2005.

22 “(2) CONTENTS.—The inventory of a covered  
 23 person subject to paragraph (1) shall—

24 “(A) be in writing; and

25 “(B) include—

1 “(i) the type of each asbestos-con-  
2 taining product possessed by the covered  
3 person;

4 “(ii) the number of product units of  
5 each asbestos-containing product in the in-  
6 ventory of the covered person; and

7 “(iii) the location of the product units.

8 “(3) RECORDS.—The information in an inven-  
9 tory of a covered person shall be maintained for a  
10 period of not less than 3 years.

11 “(4) WAIVER.—The Administrator may waive  
12 the application of this subsection to an end user that  
13 possesses a de minimis quantity of an asbestos-con-  
14 taining product, as determined by the Administrator.

15 “(d) DISPOSAL.—

16 “(1) IN GENERAL.—Except as provided in para-  
17 graph (2), not later than June 1, 2005, each covered  
18 person that possesses an asbestos-containing product  
19 that is subject to the prohibition established under  
20 this section shall dispose of the asbestos-containing  
21 product, by a means that is in compliance with ap-  
22 plicable Federal, State, and local requirements.

23 “(2) EXEMPTION.—Nothing in paragraph (1)—

24 “(A) applies to an asbestos-containing  
25 product that—

1 “(i) is no longer in the stream of com-  
2 merce; or

3 “(ii) is in the possession of an end  
4 user; or

5 “(B) requires that an asbestos-containing  
6 product described in subparagraph (A) be re-  
7 moved or replaced.

8 **“SEC. 225. PUBLIC EDUCATION PROGRAM.**

9 “(a) IN GENERAL.—Not later than March 1, 2005,  
10 and subject to subsection (c), in consultation with the  
11 Chairman of the Consumer Product Safety Commission  
12 and the Secretary of Labor, the Administrator shall estab-  
13 lish a program to increase awareness of the dangers posed  
14 by asbestos-containing products and contaminant-asbestos  
15 products in the marketplace, including homes and work-  
16 places.

17 “(b) GREATEST RISKS.—In establishing the pro-  
18 gram, the Administrator shall—

19 “(1) base the program on the results of the  
20 study conducted under section 223;

21 “(2) give priority to asbestos-containing prod-  
22 ucts and contaminant-asbestos products used by  
23 consumers and workers that pose the greatest risk  
24 of injury to human health; and

1           “(3) at the option of the Administrator on re-  
2           ceipt of a recommendation from the panel, include in  
3           the program the conduct of projects and activities to  
4           increase public awareness of the effects on human  
5           health that may result from exposure to—

6                       “(A) durable fibers; and

7                       “(B) ceramic, carbon, and other manmade  
8           fibers.

9           “(c) MINIMAL RISKS.—If the Administrator deter-  
10          mines, on the basis of the study conducted under section  
11          223, that asbestos-containing products used by consumers  
12          and workers do not pose an unreasonable risk of injury  
13          to human health, the Administrator shall not be required  
14          to conduct a program under this section.

15          “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
16          are authorized to be appropriated such sums as are nec-  
17          essary to carry out this section.”.

18          (b) VERMICULITE INSULATION.—Not later than 180  
19          days after the date of enactment of this Act, the Adminis-  
20          trator of the Environmental Protection Agency and the  
21          Consumer Product Safety Commission shall begin a na-  
22          tional campaign to educate consumers concerning—

23                       (1) the dangers of vermiculite insulation that  
24                       may be contaminated with asbestos; and

1           (2) measures that homeowners and business  
2           owners can take to protect against those dangers.

3 **SEC. 4. ASBESTOS-CAUSED DISEASES.**

4           Subpart 1 of part C of title IV of the Public Health  
5           Service Act (42 U.S.C. 285 et seq.) is amended by adding  
6           at the end the following:

7 **“SEC. 417D. RESEARCH ON ASBESTOS-CAUSED DISEASES.**

8           “(a) IN GENERAL.—The Secretary, acting through  
9           the Director of NIH and the Director of the Centers for  
10          Disease Control and Prevention shall expand, intensify,  
11          and coordinate programs for the conduct and support of  
12          research on diseases caused by exposure to asbestos, par-  
13          ticularly mesothelioma, asbestosis, and pleural injuries.

14          “(b) ADMINISTRATION.—The Secretary shall carry  
15          out this section—

16                 “(1) through the Director of NIH and the Di-  
17          rector of the CDC (Centers for Disease Control and  
18          Prevention); and

19                 “(2) in collaboration with the Administrator of  
20          the Agency for Toxic Substances and Disease Reg-  
21          istry and the head of any other agency that the Sec-  
22          retary determines to be appropriate.

23          “(c) REGISTRY.—

24                 “(1) IN GENERAL.—Not later than 1 year after  
25          the date of enactment of this section, the Director



1 of the Centers for Disease Control and Prevention,  
 2 in cooperation with the Director of the National In-  
 3 stitute for Occupational Safety and Health and the  
 4 Administrator of the Agency for Toxic Substances  
 5 and Disease Registry, shall establish a National  
 6 Mesothelioma Registry.

7 “(2) CONTENTS.—The Registry shall contain  
 8 information on diseases caused by exposure to asbes-  
 9 tos, particularly mesothelioma.

10 “(d) AUTHORIZATION OF APPROPRIATIONS.—In ad-  
 11 dition to amounts made available for the purposes de-  
 12 scribed in subsection (a) under other law, there are au-  
 13 thorized to be appropriated to carry out this section such  
 14 sums as are necessary for fiscal year 2003 and each fiscal  
 15 year thereafter.

16 **“SEC. 417E. MESOTHELIOMA TREATMENT PROGRAMS.**

17 “(a) FUNDING.—The Secretary, in consultation with  
 18 the Director of NIH and the Director of the Centers for  
 19 Disease Control and Prevention, shall provide not to ex-  
 20 ceed \$500,000 for each of fiscal years 2003 through 2007  
 21 to each institution described in subsection (b) to strength-  
 22 en the mesothelioma treatment programs carried out at  
 23 those institutions.

24 “(b) INSTITUTIONS.—The institutions described in  
 25 this subsection are the following:

1           “(1) The Memorial Sloan-Kettering Hospital,  
2           New York, New York.

3           “(2) The Karmanos Cancer Institute at Wayne  
4           State University, Detroit, Michigan.

5           “(3) The University of California at Los Ange-  
6           les Medical School, Los Angeles, California.

7           “(4) The University of Chicago Cancer Re-  
8           search Center, Chicago, Illinois.

9           “(5) The University of Pennsylvania Hospital,  
10          Philadelphia, Pennsylvania.

11          “(6) The University of Texas, through the M.D.  
12          Anderson Cancer Research Center Houston, Texas.

13          “(7) The University of Washington, Seattle,  
14          Washington.

15          “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
16          is authorized to be appropriated to carry out this section  
17          \$3,500,000 for each of fiscal years 2003 through 2007.”.

18       **SEC. 5. CONFORMING AMENDMENTS.**

19          The table of contents in section 1 of the Toxic Sub-  
20          stances Control Act (15 U.S.C. prec. 2601) is amended—

21               (1) by inserting before the item relating to sec-  
22          tion 201 the following:

“Subtitle A—General Provisions”;

23          and

24               (2) by adding at the end of the items relating  
25          to title II the following:

## “Subtitle B—Asbestos-Containing Products

“Sec. 221. Definitions.

“Sec. 222. Panel on asbestos and other durable fibers.

“Sec. 223. Study of asbestos-containing products and contaminant-asbestos products.

“Sec. 224. Prohibition on asbestos-containing products.

“Sec. 225. Public education program.”.

